

REMARKS

Reconsideration of the above-identified application, in view of the following remarks, is respectfully requested.

This submission is in response to the non-final Office Action dated May 21, 2007. Claim 1 has been amended to recite a specific range for octoxyglycerin. Support for this amendment can be found in claim 2 as filed as well as in ¶ 31 of the published application. Claims 1-2 remain currently pending. No new matter is added by way of this amendment.

Claims 1-2 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Modak et al. (U.S. Patent No. 5,965,610) or Jampani et al. (U.S. 5,980,925) in view of Beilfuss et al. (U.S. 5,516,510). According to the Examiner, Modak and Jampani each disclose all aspects of the invention with the exception of octoxyglycerin. The Examiner asserts that the addition of octoxyglycerin to enhance activity of active ingredients is taught by Beilfuss. Therefore, the Examiner erroneously concludes that one skilled in the art, based on the teachings of the cited art, would arrive at the claimed invention. Applicants respectfully traverse these rejections and request reconsideration.

Applicant submits that the present claims are not obvious over the cited art. Modak ('610 patent) is directed to topical gel compositions containing an irritant-inactivating agent and a substance that substantially prevents the irritant-inactivating agent from binding to the surface (antibinding agent). (Col. 3: lines 10-17). The irritant-inactivating agent may be an anti-allergen or anti-microbial agent. (4:36-40). Among the various embodiments, Modak teaches a composition with the antimicrobial chlorhexidine gluconate and the antibinding agent zinc oxide among other various ingredients. (10:61-11:20). As conceded by the Examiner, Modak fails to disclose or teach octoxyglycerin.

Applicants submit that further reliance on Beilfuss fails to provide one skilled in the art the necessary teachings to arrive at the present invention. Beilfuss discloses glycerin monoalkylethers alone and in combination with other deodorizing ingredients, such as phenoxyethanol or chlorhexidine salts, and states that "synergistic increases in effect are also observed in *some* cases." (3:38-42). This is evidenced by a "sniff test". However, Beilfuss fails to provide any quantifiable results as to any specific synergistic effect that may/may not be present.

Furthermore, Applicants submit that the teachings of Modak and Beilfuss would not be combined by one skilled in the art. Beilfuss is solely directed to specific effects against gram-positive bacteria. As indicated throughout the specification, Beilfuss emphasizes “good effect in particular against the gram-positive bacteria which are particularly relevant from the point of view of causing odor”. (See 1:49-51; 2:24-26; and 2:51-53). On the other hand, the present invention explicitly differentiates itself from deodorant type formulations. “Formulations useful as deodorants, however, would differ from those used as skin sanitizers in that skin sanitizers would optimally exhibit rapid broad spectrum activity against bacteria, fungi, and viruses”. (See ¶16 publication). This is evidenced in the Examples of the present specification, including Examples 11 and 15, which demonstrate antimicrobial activity against both gram-positive as well as gram-negative bacteria. Thus, Beilfuss is limited in its teachings and applications and would not be considered to one skilled in the art to have any ability beyond gram positive bacteria. Therefore, Applicants submit that Beilfuss in no way lends supportive teachings to the present invention.

The Examiner has failed to provide any basis as to why one skilled in the art would combine these references. Rather, Applicant submits that the Examiner uses improper hindsight in the present obviousness rejections by choosing various elements of the art to arrive at the claimed invention. *See In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988) (“One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention”); *see also In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998) (“To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness.”).


Even if the references were viewed in combination, the present invention rebuts any assertions of obviousness. Applicants direct the Examiner to the surprising and unexpected antimicrobial effects shown in the numerous examples testing the various claimed compositions. See Examples 1-19. In all of the Examples, antimicrobial growth was tested using various combinations of the claimed invention as compared to controls. The data show unexpected results, including 5,000-33,000-fold reduction in colony forming units (Example 1) and 800-100,000 fold reductions in cfu (Example 2). (See additional Examples for additional results). Example 4 provides a discussion regarding the surprising synergism, noting that the compositions “greatly resulted in an antibacterial activity greater than what would have been expected”. Clearly, applicants have provided more than adequate disclosure of unexpected results. Therefore, the claimed invention is nonobvious over the cited art. Accordingly, Applicants request the rejection be withdrawn.

With respect to Jampani, Applicants submit that for at least the same reasons noted above regarding unexpected results, the claimed invention is not obvious. Jampani discloses compositions with greater than 30% glycerin. The premise of Jampani is the high glycerin component. Combining Jampani with Beilfuss would not lead one skilled in the art to arrive at the present invention. Rather, the disclosure in Jampani serves as a teaching away from the presently claimed invention in that there are conflicting teachings with respect to the amounts of glycerin and glycerin monoalkyl ethers. The presently claimed invention comprises between 1 and 5 percent (volume/volume) octoxyglycerin, an amount that is far from the teaching in Jampani. Therefore, Applicants submit that the claimed invention is not obvious over the cited art. Accordingly, Applicants request that the rejection be withdrawn.

In view of the above amendments and remarks, it is respectfully requested that the application be considered for substantive examination. If there are any other issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

Respectfully submitted,

BAKER BOTTS L.L.P.



Sandra S. Lee
Patent Office Reg. No. 51,932

Lisa B. Kole
Patent Office Reg. No. 35,225

30 Rockefeller Plaza
44th Floor
New York, NY 10012-4498
Attorney for Applicant(s)
212-408-2500

Date